IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

MFA.No. 501 of 2003()

OPMV.3392/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

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APPELLANT: PETITIONER:

V.K.KRISHNA KUMAR, AGED 40 YEARS,
SON OF V.A.KARUNAKARAN, VELUTHEDATHPARAMBIL HOUSE,
KARIPPATTOOR, ARAKKUNNAM.

BY ADV. SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.NITHYA.K.

RESPONDENTS: RESPONDENTS 1 TO 3:

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1. P.V.RAJAN,
PUTHUKULATHIL HOUSE, EDAKKATTUVAYAL P.O.,
(VIA) ARAKUNNAM.

2. K.K.RAMESAN,
KANDAMKARIKKAL HOUSE, KULAYATTIKARA P.O.,
KANJIRAMATTOM.

3. THE NATIONAL INSURANCE CO. LTD.,
TRIPUNITHURA.

BY ADV. SRI.LAL GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

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M.F.A.No.501 of 2003-A

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Dated this the 18th day of December, 2007

J U D G M E N T

This appeal is filed by the petitioner in O.P(M.V). No.3392/1996 on the file of the Motor Accidents Claims Tribunal, Ernakulam, challenging an award passed by the Tribunal dismissing the claim petition filed by him.

2. The appellant was riding a scooter, bearing Regn.No.KL-7/E 9470, along the Arakkunnam-Piravom road on 18/08/1996. When the scooter reached the place of accident, it hit against the rear side of a Mini lorry bearing Regn.No.KL-7/G 5, which was also plying on the same direction. The appellant sustained injuries. He filed the original petition claiming compensation, alleging that the driver of the Mini lorry abruptly stopped the lorry without showing a signal. It was averred that the appellant was unable to stop the scooter and, hence, it hit against the rear side of the Mini lorry. The Tribunal held that the accident

occurred due to the negligence of the appellant alone. The Tribunal took a view that the AMVI's report does not reveal any damage to the rear side of the Mini lorry, hence, the contention of the appellant that it hit against the Mini lorry cannot be believed. It also found that though the appellant has got a case that he was initially taken to Government Hospital, Mulanthuruthy, the wound certificate issued from that hospital was not produced. It was also observed that in Ext.A6 wound certificate issued from City Hospital, Ernakulam, it was recorded that he was referred to the City Hospital by a local hospital. The Tribunal came to a conclusion that without seeing the wound certificate issued from the hospital referred to in Ext.A6 certificate the cause of injury cannot be ascertained. The Tribunal dismissed the Original Petition.

3. The learned counsel appearing for the appellant has argued that a criminal case was registered against the second respondent, the driver of the Mini lorry and the police, after investigation, filed a final report against him alleging that the accident occurred due to his negligence. The appellant had produced those documents. It is argued that the relevancy and

evidentiary value of those documents were not considered by the Tribunal.

4. The learned counsel appearing for the Insurance company has argued that the case put up by the appellant is that the accident occurred due to the negligence of the second respondent alone. It is argued that the admitted case of the appellant was that he was following the Mini lorry. It was argued that under Rule 10(2) of the Central M.V.Rules framed under the Act, a person, who is driving a vehicle on the rear of another vehicle is bound to maintain a safe distance, and even accepting the case of the appellant he could have prevented the accident, provided he was keeping that distance. It is argued that the admission made by the appellant that he was following the Mini lorry itself proves that he alone is responsible for the accident.

5. The mere fact that appellant was riding the scooter on the rear of the lorry alone is not a ground to hold that the appellant is solely responsible for the accident. Whether the accident occurred due to the negligence of the driver of the Mini lorry or

whether the appellant also contributed for the accident was not considered by the Tribunal. So, I am of the view that it is only just and proper that the appellant be only given an opportunity to establish the case pleaded by him. It is open to the Insurance Company to adduce necessary evidence in this case.

In the result, the appeal is allowed. The award passed by the Tribunal on 28/06/2002 is hereby set aside. O.P(M.V). No.3392/1996 is remanded to the Tribunal for fresh consideration. The Tribunal is directed to take O.P(M.V). No.3392/1996 back to file and dispose of the same afresh, after giving opportunity to both sides to adduce evidence. The parties are directed to appear before the court below on 22/01/2008.

Sd/-

K.PADMANABHAN NAIR,
Judge

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P.A.to Judge

K.PADMANABHAN NAIR, J.

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M.F.A.No.501 of 2003-A

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J U D G M E N T

18th December, 2007